



HB 653, Engrossed 1

2018

1 A bill to be entitled
2 An act relating to public records; amending s.
3 406.136, F.S.; expanding an exemption from public
4 records requirements for a photograph or video or
5 audio recording held by an agency that depicts or
6 records the killing of a law enforcement officer to
7 include a photograph or video or audio recording held
8 by an agency that depicts or records the killing of a
9 victim of a school shooting or the killing of a victim
10 of a mass shooting; providing for future legislative
11 review and repeal of the exemption; providing a
12 statement of public necessity; providing an effective
13 date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Section 406.136, Florida Statutes, is amended
18 to read:

19 406.136 A photograph or video or audio recording that
20 depicts or records the killing of a law enforcement officer who
21 was acting in accordance with his or her official duties, the
22 killing of a victim of a school shooting, or the killing of a
23 victim of a mass shooting.—

24 (1) As used in this section, the term:

25 (a) "Killing of a law enforcement officer who was acting



26 | in accordance with his or her official duties" means all acts or
27 | events that cause or otherwise relate to the death of a law
28 | enforcement officer who was acting in accordance with his or her
29 | official duties, including any related acts or events
30 | immediately preceding or subsequent to the acts or events that
31 | were the proximate cause of death.

32 | (b) "Killing of a victim of a mass shooting" means all
33 | acts or events that cause or otherwise relate to the death of a
34 | person, not including the perpetrator, who is killed in an
35 | incident in which three or more people, not including the
36 | perpetrator, are killed by an intentional act of gun violence by
37 | another person.

38 | (c) "Killing of a victim of a school shooting" means all
39 | acts or events that cause or otherwise relate to the death of a
40 | person, not including the perpetrator, who is killed in an
41 | incident at a school by an intentional act of gun violence by
42 | another person, including any related acts or events immediately
43 | preceding or subsequent to the acts or events that were the
44 | proximate cause of death.

45 | (2) A photograph or video or audio recording that depicts
46 | or records the killing of a law enforcement officer who was
47 | acting in accordance with his or her official duties, the
48 | killing of a victim of a school shooting, or the killing of a
49 | victim of a mass shooting is confidential and exempt from s.
50 | 119.07(1) and s. 24(a), Art. I of the State Constitution, except



51 | that a surviving spouse of the decedent may view and copy any
52 | such photograph or video recording or listen to or copy any such
53 | audio recording. If there is no surviving spouse, ~~then~~ the
54 | surviving parents shall have access to such records. If there is
55 | no surviving spouse or parent, the ~~then an~~ adult children ~~child~~
56 | shall have access to such records.

57 | (3) (a) The deceased's surviving relative, with whom
58 | authority rests to obtain such records, may designate in writing
59 | an agent to obtain such records.

60 | (b) A local governmental entity, or a state or federal
61 | agency, in furtherance of its official duties, pursuant to a
62 | written request, may view or copy a photograph or video
63 | recording or may listen to or copy an audio recording of the
64 | killing of a law enforcement officer who was acting in
65 | accordance with his or her official duties, the killing of a
66 | victim of a school shooting, or the killing of a victim of a
67 | mass shooting, and, unless otherwise required in the performance
68 | of its ~~their~~ duties, the identity of the deceased shall remain
69 | confidential and exempt.

70 | (c) The custodian of the record, or his or her designee,
71 | may not permit any other person to view or copy such photograph
72 | or video recording or listen to or copy such audio recording
73 | without a court order.

74 | (4) (a) The court, upon a showing of good cause, may issue
75 | an order authorizing any person to view or copy a photograph or



76 | video recording that depicts or records the killing of a law
77 | enforcement officer who was acting in accordance with his or her
78 | official duties, the killing of a victim of a school shooting,
79 | or the killing of a victim of a mass shooting, or to listen to
80 | or copy an audio recording that depicts or records the killing
81 | of a law enforcement officer who was acting in accordance with
82 | his or her official duties, the killing of a victim of a school
83 | shooting, or the killing of a victim of a mass shooting, and may
84 | prescribe any restrictions or stipulations that the court deems
85 | appropriate.

86 | (b) In determining good cause, the court shall consider:

87 | 1. Whether such disclosure is necessary for the public
88 | evaluation of governmental performance;

89 | 2. The seriousness of the intrusion into the family's
90 | right to privacy and whether such disclosure is the least
91 | intrusive means available; and

92 | 3. The availability of similar information in other public
93 | records, regardless of form.

94 | (c) In all cases, the viewing, copying, listening to, or
95 | other handling of a photograph or video or audio recording that
96 | depicts or records the killing of a law enforcement officer who
97 | was acting in accordance with his or her official duties, the
98 | killing of a victim of a school shooting, or the killing of a
99 | victim of a mass shooting must be under the direct supervision
100 | of the custodian of the record or his or her designee.



101 (5) A surviving spouse shall be given reasonable notice of
102 a petition filed with the court to view or copy a photograph or
103 video recording that depicts or records the killing of a law
104 enforcement officer who was acting in accordance with his or her
105 official duties, the killing of a victim of a school shooting,
106 or the killing of a victim of a mass shooting, or to listen to
107 or copy any such audio recording, a copy of such petition, and
108 reasonable notice of the opportunity to be present and heard at
109 any hearing on the matter. If there is no surviving spouse, ~~then~~
110 such notice must be given to the parents of the deceased and, if
111 the deceased has no surviving ~~living~~ parent, ~~then~~ to the adult
112 children of the deceased.

113 (6) (a) Any custodian of a photograph or video or audio
114 recording that depicts or records the killing of a law
115 enforcement officer who was acting in accordance with his or her
116 official duties, the killing of a victim of a school shooting,
117 or the killing of a victim of a mass shooting who willfully and
118 knowingly violates this section commits a felony of the third
119 degree, punishable as provided in s. 775.082, s. 775.083, or s.
120 775.084.

121 (b) Any person who willfully and knowingly violates a
122 court order issued pursuant to this section commits a felony of
123 the third degree, punishable as provided in s. 775.082, s.
124 775.083, or s. 775.084.

125 (c) A criminal or administrative proceeding is exempt from



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126 | this section but, unless otherwise exempted, is subject to all
127 | other provisions of chapter 119; 7 provided, however, ~~that~~ this
128 | section does not prohibit a court in a criminal or
129 | administrative proceeding upon good cause shown from restricting
130 | or otherwise controlling the disclosure of a killing, crime
131 | scene, or similar photograph or video or audio recording
132 | ~~recordings~~ in the manner prescribed in this section herein.

133 | (7) ~~The~~ This exemption in this section shall be given
134 | retroactive application and shall apply to all photographs or
135 | video or audio recordings that depict or record the killing of a
136 | law enforcement officer who was acting in accordance with his or
137 | her official duties, the killing of a victim of a school
138 | shooting, or the killing of a victim of a mass shooting,
139 | regardless of whether the killing of the person occurred before,
140 | on, or after July 1, 2015 ~~2011~~. However, nothing in this section
141 | ~~herein~~ is intended to, nor may be construed to, overturn or
142 | abrogate or alter any existing orders duly entered into by any
143 | court of this state, as of the effective date of this act, which
144 | restrict or limit access to any photographs or video or audio
145 | recordings that depict or record the killing of a law
146 | enforcement officer who was acting in accordance with his or her
147 | official duties, the killing of a victim of a school shooting,
148 | or the killing of a victim of a mass shooting.

149 | (8) This section only applies to such photographs and
150 | video and audio recordings held by an agency as defined in s.



151 119.011.

152 (9) This section is subject to the Open Government Sunset
153 Review Act in accordance with s. 119.15 and shall stand repealed
154 on October 2, 2023, unless reviewed and saved from repeal
155 through reenactment by the Legislature.

156 Section 2. (1) The Legislature finds that it is a public
157 necessity that photographs and video and audio recordings that
158 depict or record the killing of a victim of a school shooting or
159 the killing of a victim of a mass shooting be made confidential
160 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
161 Art. I of the State Constitution. The Legislature finds that
162 photographs and video and audio recordings that depict or record
163 the killing of a victim of a school shooting or the killing of a
164 victim of a mass shooting render a graphic and often disturbing
165 visual or aural representation of the deceased. Such photographs
166 and video and audio recordings provide a view of the deceased in
167 the final moments of life, often bruised, bloodied, broken, with
168 bullet wounds or other wounds, cut open, dismembered, or
169 decapitated. As such, photographs and video and audio recordings
170 that depict or record the killing of a victim of a school
171 shooting or the killing of a victim of a mass shooting are
172 highly sensitive representations of the deceased which, if
173 heard, viewed, copied, or publicized, could result in trauma,
174 sorrow, humiliation, or emotional injury to the immediate family
175 of the deceased and detract from the memory of the deceased. The



176 Legislature recognizes that the existence of the Internet and
177 the proliferation of personal computers and cellular telephones
178 throughout the world encourages and promotes the wide
179 dissemination of such photographs and video and audio recordings
180 24 hours a day and that widespread unauthorized dissemination of
181 such photographs and video and audio recordings would subject
182 the immediate family of the deceased to continuous injury.

183 (2) In addition to the emotional and mental injury that
184 these photographs and recordings may cause family members, the
185 Legislature is also concerned that dissemination of photographs
186 and video and audio recordings that depict or record the killing
187 of a victim of a school shooting or the killing of a victim of a
188 mass shooting is harmful to the public. The Legislature is
189 gravely concerned and saddened by the horrific mass killings
190 perpetrated at the Pulse nightclub in Orlando, the Fort
191 Lauderdale-Hollywood International Airport, and Marjory Stoneman
192 Douglas High School. The Legislature is concerned that, if these
193 photographs and recordings are released, terrorists will use
194 them to attract followers, bring attention to their causes, and
195 inspire others to kill. The Legislature also finds that
196 dissemination of these photographs and recordings may also educe
197 violent acts by the mentally ill or morally corrupt.

198 (3) The Legislature further recognizes that there
199 continues to be other types of available information, such as
200 crime scene reports, which are less intrusive and injurious to



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201 | the immediate family of the deceased and which continue to
202 | provide for public oversight. The Legislature further finds that
203 | the exemption provided in this act should be given retroactive
204 | application because it is remedial in nature.

205 | Section 3. This act shall take effect upon becoming a law.